

### **REMARKS/ARGUMENTS**

This application has been reviewed in light of the Office Action mailed on August 16, 2007. Claims 1-17 are pending in the application with Claims 1 and 8 being in independent form. In view of the following remarks, reconsideration and allowance of this application are respectfully requested.

#### **Claim Rejections – 35 U.S.C. §103**

Claims 1-17 were rejected under 35 U.S.C. §103(a) over U.S. Publication No. 20020188294 (now U.S. Patent No. 7,083,618) to Couture in view of U.S. Patent No. 5,573,534 to Stone. In the previous response, Applicants submitted that the Couture reference qualifies as art under 35 U.S.C. §102(e) and is owned by a common Assignee of record, namely, Sherwood Services AG, and is therefore not properly citable as prior art against the present application.

In the Office Action, it was asserted that the present invention has a priority date of June 3, 2003 and the Couture reference was published before the priority date on December 12, 2002. It was therefore concluded that it would be improper to consider Couture as a §102(e) reference.

Applicants hereby respectfully submit that the present application has a priority date of June 6, 2002, which is before the priority date of Couture, thus properly qualifying Couture as a §102(e) reference. Specifically, the present application is a National Stage Entry of PCT/US03/17335, which claims the benefit of U.S. Application Serial No. 10/164,654, which has a filing date of June 6, 2002 (see Appendix A showing printouts

from PAIR). Therefore, the priority date of the present application is June 6, 2002 and Couture qualifies as a §102(e) reference.

More particularly and as per MPEP § 706.02(I), the present application was filed after November 29, 1999 and on information and belief the claims of the present application and the cited publication relate to subject matter which were at the time the invention was made, owned by the same corporation and under an obligation of assignment to the same corporation, namely, Sherwood Services AG. In accordance with MPEP §706.02(I), the above statement is sufficient evidence to show common ownership at the time the invention was made:

*Applications and references (whether patents, patent applications, patent application publications, etc.) will be considered by the examiner to be owned by, or subject to an obligation of assignment to the same person, at the time the invention was made, if the applicant(s) or an attorney or agent of record makes a statement to the effect that the application and the reference were, at the time the invention was made, owned by, or subject to an obligation of assignment to, the same person. MPEP §706.02(I).*

In view of the foregoing, it is respectfully submitted that the Couture reference is disqualified as prior art against Claims 1-17 of the present disclosure. Accordingly, for at least these reasons, Applicants respectfully request withdrawal of this rejection and earnestly seek allowance of Claims 1-17.


**CONCLUSION**

In view of the foregoing remarks, it is respectfully submitted that all claims presently pending in the application, namely Claims 1-17, are believed to be in condition for allowance.

If the Examiner should have any questions concerning this communication or feels that an interview would be helpful, the Examiner is requested to call the Applicants' undersigned attorney at the Examiner's convenience.

Please charge any deficiency as well as any other fee(s) that may become due under 37 C.F.R. § 1.16 and/or 1.17 at any time during the pendency of this application, or credit any overpayment of such fee(s), to Deposit Account No. 21-0550.

Respectfully submitted,

  
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